

**AGREEMENT FOR SECURITY GUARD SERVICES AT
DEPARTMENT OF PUBLIC WORKS FACILITIES
BETWEEN THE CITY OF SAN JOSE
AND FIRST ALARM SECURITY & PATROL, INC.**

THIS AGREEMENT is made and entered into this _____ day of _____, 2013, between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and FIRST ALARM SECURITY & PATROL, INC., a California corporation (hereinafter "CONTRACTOR").

R E C I T A L S

WHEREAS, on September 13, 2012, CITY issued a Request for Proposal ("RFP"), RFP 12-13-01, for Citywide Security Patrol Guard Services, which RFP included a solicitation for Security Patrol Guard Services at Department of Public Works ("PW") facilities; and

WHEREAS, CONTRACTOR has the necessary expertise and skill to perform such services, and CONTRACTOR's proposal can best meet CITY's needs;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

SECTION 1. AGREEMENT DOCUMENTS.

The documents forming the entire Agreement between CITY and CONTRACTOR shall consist of this Agreement including:

- Exhibit A - Scope of Services
- Exhibit B - Schedule of Performance
- Exhibit C - Compensation
- Exhibit D - Insurance Requirements
- Exhibit E - Labor Compliance Addendum
- Exhibit E-1 - Wage Requirements
- Exhibit E-2 - Labor Peace
- Exhibit F - Notice of Exercise Option to Extend Agreement

Exhibit G - Supplemental Work Order Form

In the event any discrepancies or inconsistencies between the provisions of this Agreement and any of the above-referenced documents arise, the provisions of this Agreement will prevail.

This Agreement and the Exhibits set forth above, contain all of the agreements, representations and understandings of the parties hereto, and supersede and replace any previous understandings, commitments, or agreements, whether oral or written.

SECTION 2. SCOPE OF SERVICES.

CONTRACTOR shall perform those services specified in detail in the attached Exhibit A, entitled "Scope of Services," which is attached hereto and incorporated herein.

SECTION 3. TERM OF AGREEMENT.

- A. The term of this Agreement shall be from April 1, 2013 to March 31, 2018, inclusive, subject to the provisions of Section 8 and subsection 3B of this Agreement ("Initial Term").
- B. CITY has the right to extend the term of this Agreement for five (5) additional one-year periods (the "Additional Terms"), based upon the same conditions of the Initial Term, subject to adjustments for compensation as set forth in Exhibit C. CITY shall notify CONTRACTOR in writing of its intention to exercise its option for an Additional Term no less than thirty (30) days prior to the end of the then current Term.
- C. CITY's agreement to extend the term of this Agreement is not a waiver of the "time is of the essence" provision in Section 4.
- D. CITY's funding of this Agreement shall be on a fiscal year basis (July 1 to June 30) and is subject to annual appropriations. CONTRACTOR acknowledges that

CITY, a municipal corporation, is precluded by the California State Constitution and other laws from entering into obligations that financially bind future governing bodies, and that, therefore, nothing in this Agreement shall constitute an obligation of future legislative bodies of the CITY to appropriate funds for purposes of this Agreement. Accordingly, the parties agree that the Initial Term and any Additional Term is contingent upon the appropriation of funds by the CITY. This Agreement will terminate immediately if the funds necessary to continue the Agreement are not appropriated.

SECTION 4. **SCHEDULE OF PERFORMANCE.**

The services of CONTRACTOR are to be completed according to the schedule set out in Exhibit B, entitled "Schedule of Performance," which is attached hereto and incorporated herein. Time is of the essence in this Agreement.

SECTION 5. **COMPENSATION.**

- A. The compensation to be paid to CONTRACTOR for security guard services, including payments for scheduled, supplemental services (unscheduled work), any percentage increase that CITY may impose on CONTRACTOR to provide days off and/or pay its employees for additional days off mandated by CITY'S Council, and potential annual adjustments shall not exceed Two Hundred Seventy-Three Thousand Seven Hundred Thirteen Dollars (\$273,713.00) for the Initial Term, subject to Section 3.D. The rate and schedule of payment is set out in Exhibit C, entitled "Compensation," which is attached hereto and incorporated herein.

- B. CONTRACTOR agrees that in the performance of this Agreement, CONTRACTOR shall adhere to City Council Policy 1-19, the following provisions of which are made applicable to this Agreement:
 - 1. It is the policy of the CITY that the CITY's funds should not be used for the purchase of single-serving bottled water.

2. The following circumstances shall constitute exceptions to City Council Policy 1-19:
 - a. Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services.
 - b. High risk of cross-contamination with non-potable water.
 - c. Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water may need to be distributed for health and safety reasons.
3. CONTRACTOR acknowledges and agrees that an invoice seeking reimbursement from CITY for the cost of single-serving bottled water under the exception referenced above in Subsection 2(c) must be accompanied by a waiver form provided by CITY and signed by the department head of the CITY department administering this Agreement.

SECTION 6. TAXES AND CHARGES.

CONTRACTOR shall be responsible for payment of all taxes, fees, contributions or charges applicable to the conduct of CONTRACTOR's business.

SECTION 7. LABOR COMPLIANCE.

This Agreement is subject to CITY's Prevailing/Living Wage Policy and the applicable implementing regulations (collectively, the "Policy"). CONTRACTOR shall comply with the provisions of Exhibit E, entitled "Labor Compliance Addendum," and Exhibit E-1, entitled "Wage Requirements", which set forth CONTRACTOR's obligations under the Policy and are attached hereto and incorporated herein. CONTRACTOR's labor peace assurances are set forth in the Exhibit E-2, entitled "Labor Peace," which is attached hereto and incorporated herein.

SECTION 8. TERMINATION.

- A. CITY shall have the right to terminate this Agreement, without cause, by giving not less than thirty (30) days' written notice of termination.

- B. If CONTRACTOR fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, CITY may terminate this Agreement immediately upon written notice.

- C. CITY's Director of Finance ("Director") is empowered to terminate this Agreement on behalf of CITY.

- D. In the event of termination, CONTRACTOR shall deliver to CITY copies of all reports, documents, and other work performed by CONTRACTOR under this Agreement, and upon receipt thereof, CITY shall pay CONTRACTOR for services performed and reimbursable expenses incurred to the date of termination.

SECTION 9. INDEMNIFICATION.

CONTRACTOR shall defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this Agreement due to the willful or negligent acts (active or passive) or omissions by CONTRACTOR's officers, employees or agents. The acceptance of said services and duties by CITY shall not operate as a waiver of such right of indemnification.

SECTION 10. INSURANCE REQUIREMENTS.

CONTRACTOR agrees to have and maintain the policies set forth in Exhibit D, entitled "Insurance Requirements," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of the City of San José as to form and content. These requirements are subject to amendment or

waiver if so approved in writing by the Risk Manager. CONTRACTOR agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this Agreement.

SECTION 11. **WAIVER.**

CONTRACTOR agrees that waiver by CITY of any breach or violation of any terms or condition of this Agreement shall not be deemed to be a waiver of any other term or condition or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of any work or services by CONTRACTOR shall not be deemed a waiver of any term or condition of this Agreement.

SECTION 12. **INDEPENDENT CONTRACTOR.**

It is understood and agreed that CONTRACTOR, in the performance of this Agreement, shall act as and be an independent CONTRACTOR and not an agent or employee of CITY; and as an independent CONTRACTOR, CONTRACTOR shall obtain no rights to retirement benefits or other benefits which may accrue to CITY's employees, and CONTRACTOR hereby expressly waives any claim it may have to any such rights. CONTRACTOR shall maintain complete control over all of CONTRACTOR's employees, any subcontracting subcontractors, and CONTRACTOR's operations. Neither CONTRACTOR nor any person retained by CONTRACTOR may represent, act, or purport to act as the agent, representative or employee of CITY. Neither CONTRACTOR nor CITY is granted any right or authority to assume or create any obligation on behalf of the other.

SECTION 13. **COMPLIANCE WITH LAWS.**

CONTRACTOR shall comply with all applicable laws, ordinances, codes and regulations (collectively, "laws") of the federal, state and local governments. Without limiting the generality of the preceding sentence, CONTRACTOR shall comply with the provisions of CITY's Business Tax Ordinance in Chapter 4.76 of the San José Municipal Code.

SECTION 14. **NONDISCRIMINATION.**

CONTRACTOR shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

SECTION 15. **GIFTS.**

- A. CONTRACTOR is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.
- B. CONTRACTOR agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this Agreement by CONTRACTOR. In addition to any other remedies CITY may have in law or equity, CITY may terminate this Agreement for such breach as provided in Section 8 of this Agreement.

SECTION 16. **DISQUALIFICATION OF FORMER EMPLOYEES.**

CONTRACTOR is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance"). CONTRACTOR shall not utilize either directly or indirectly any officer, employee, or agent of CONTRACTOR to perform services under this Agreement, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

SECTION 17. **CONFIDENTIAL INFORMATION.**

All data, documents, discussions or other information developed or received by or for CONTRACTOR in performance of this Agreement are confidential and must not be disclosed to any person except as authorized by CITY, or as required by law.

SECTION 18. OWNERSHIP OF MATERIALS.

All reports, documents or other materials developed or discovered by CONTRACTOR or any other person engaged directly or indirectly by CONTRACTOR to perform services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use.

SECTION 19. CONTRACTOR'S BOOKS AND RECORDS.

- A. CONTRACTOR shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONTRACTOR pursuant to this Agreement.
- B. CONTRACTOR shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.
- C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CONTRACTOR's address indicated for receipt of notices in this Agreement. CONTRACTOR acknowledges that under

certain circumstances specified in California Government Code Section 8546.7, this Agreement (if it involves an expenditure of \$10,000 or more of public funds) may be subject to examination and audit by the Auditor of the State of California pursuant to California Government Code Section 8546.7.

- D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT'S business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by CONTRACTOR, CONTRACTOR's representatives, or CONTRACTOR's successor-in-interest.

SECTION 20. **ASSIGNABILITY.**

The parties agree that the expertise and experience of CONTRACTOR are material considerations for this Agreement. CONTRACTOR shall not assign or transfer any interest in this Agreement nor the performance of any of CONTRACTOR's obligations hereunder, without prior written consent of CITY, and any attempt by CONTRACTOR to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 21. **SUBCONTRACTORS.**

CONTRACTOR may not use subcontractors to perform any services authorized under this Agreement.

SECTION 22. **GOVERNING LAW.**

CITY and CONTRACTOR agree that the law governing this Agreement shall be that of the State of California.

SECTION 23. **VENUE.**

In the event that suit is brought by either party to this Agreement, the parties agree that venue must be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

SECTION 24. **NOTICES.**

All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, to the respective parties as follows:

To CITY:	Director of Finance City of San José 200 East Santa Clara St. San José, CA 95113
To CONTRACTOR:	First Alarm Security & Patrol, Inc. 1731 Technology Drive #800 San José, CA 95110

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 25. **MISCELLANEOUS.**

- A. If any part of this Agreement is for any reason found to be unenforceable, all other parts nevertheless remain enforceable.
- B. Subject to the provisions of Section 22 this Agreement binds and inures to the benefit of the parties and their respective successors and assigns.
- C. The headings of the sections and exhibits of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and are not to be used in its construction.

- D. Where this Agreement requires or permits CITY to act and no officer of the CITY is specified, CITY's Manager or the designated representative of CITY's Manager has the authority to act on CITY's behalf.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written:

APPROVED AS TO FORM:

City of San José,
a municipal corporation

Rosa Tsongtaatarii
Sr. Deputy City Attorney

By _____
Name: Mark Giovannetti
Title: Division Manager
Date: _____

First Alarm Security & Patrol, Inc.,
a California Corporation

By _____
Name: _____
Title: _____
Date: _____

**EXHIBIT A
SCOPE OF SERVICES
DEPARTMENT OF PUBLIC WORKS FACILITIES**

CONTRACTOR shall perform the following services for the Department of Public Works ("PW") facilities listed below.

1. GENERAL REQUIREMENTS

- 1.1.** CONTRACTOR shall provide all labor, equipment, tools, materials and supplies to perform services under this Agreement and as described herein.
- 1.2.** Service level requirements will be based on the Schedule of Performance as set forth in Exhibit B.
- 1.3. PERSONNEL RECRUITMENT**

CONTRACTOR shall have an established comprehensive personnel recruitment program for new and replacement personnel, to include, but not be limited to, interviewing/test procedures, background checks (by type and degree), physical exams, psychological tests or drug testing (if any), education and work experience verification.

 - 1.3.1.** All applicable governmental laws and regulations must be adhered to on the recruiting and hiring process.
 - 1.3.2.** All recruitments shall be in accordance with all applicable employee retention requirements set forth in Exhibit E-1.
 - 1.3.3.** Security Guards and Supervisors shall possess valid credentials evidencing Security Guard Registration with the Bureau of Security and Investigative Services of the California Department of Consumer Affairs. These credentials must be in the possession of the guard at all times, and must be presented at any time to any law enforcement officer or CITY representative. Failure of a guard to meet this requirement may result in liquidated damages and nonpayment by CITY to CONTRACTOR for such guard's services. CONTRACTOR shall also be required to immediately provide a replacement guard for offenders.
 - 1.3.4.** The recruitment process must be documented and available to the CITY's Project Managers upon request.
 - 1.3.5.** CITY reserves the right, at its sole discretion, to refuse the services of any particular guard. In such cases, CONTRACTOR shall

immediately remove said guard from CITY services and provide a replacement guard at no additional cost.

1.4. TRAINING PROGRAM – INITIAL & ONGOING

CONTRACTOR shall have an established, comprehensive personnel training program that all security guards and other assigned staff will undergo in order to ensure that all security guards are competent to perform all duties required under this Agreement.

1.4.1. No additional hourly costs, to the billing rate, are to be charged to the CITY for any aspect of the training program.

1.5. STANDARDS OF CONDUCT AND APPEARANCE

CONTRACTOR shall have established comprehensive standards of appearance for maintaining both professional standards of conduct and neat personal appearance for its employees.

1.6. LIQUIDATED DAMAGES

CONTRACTOR may be subject to liquidated damages in the event CONTRACTOR fails to complete services as described in this Exhibit and as identified in Exhibit C, Section 6, Table 1.

2. SCOPE OF SERVICES PUBLIC WORK'S FACILITIES

2.1. CONTRACTOR shall provide all labor, material, supplies, vehicles and equipment and shall plan, schedule, train, coordinate and ensure the effective performance of all services as described below. CONTRACTOR shall provide security services in accordance with the requirements of this specification at:

City of San José
Central Service Yard
1661 Senter Rd
San José, CA 95112

AND

City of San José
City Hall
200 East Santa Clara St
San José, CA 95113

2.2. SCOPE OF WORK – CENTRAL SERVICE YARD

2.2.1. CONTRACTOR shall provide twenty-one (21) hours of weekly guard patrols of unarmed, uniformed coverage to provide security and exterior

gate locking and unlocking services for the Central Service Yard, as well as security services needed on a short-term emergency basis.

2.2.2. The Central Service Yard is enclosed by Senter Road to the east, Phelan Avenue to the south and 10th Street to the west. CONTRACTOR shall provide regular hours of service: Sunday through Saturday, twenty-four (24) hours per day seven (7) days a week. Patrols shall be scheduled every four (4) hours with half hour shifts each. Final scheduled hours shall be arranged with CITY'S Project Manager and are subject to change at CITY's sole discretion.

2.2.3. CONTRACTOR SHALL PERFORM THE FOLLOWING DUTIES AT THIS SITE:

2.2.4. CONTRACTOR shall patrol along the exterior of the perimeter of the facility, as well as within the facility. Special focus shall be given to the employee lot, CITY vehicle fleet lot, and visitor parking lot. CONTRACTOR shall also patrol the northwest portion of the yard to ensure CITY vehicles and equipment stored in this area are free from vandalism.

2.2.5. On normal business days, Monday through Friday excluding holidays, CONTRACTOR shall provide patrols during the twenty-four (24) hour period to ensure maximum security coverage, which includes one (1) opening routine of specified exterior gates (starting at 5:30 a.m. to ensure all specified gates are unlocked by 6:00 a.m.) and one (1) closing routine of specified exterior gates (to be started at 6:00 p.m.).

2.2.6. CONTRACTOR shall install, maintain and use an electronic guard tour verification system at no additional cost to the CITY.

2.2.6.1. This system shall be capable of logging hours of patrol through individual scans as guards pass the point.

2.2.6.2. CONTRACTOR shall log each daily round trip, including time of arrival and departure for each patrol, with the electronic time logging system. Logging system shall be fully and properly operational as service commences. Phone calls to the CITY's Project Manager to report arrivals and departures may be used if technical problems arise with the electronic time logging system on a limited basis.

2.2.7. CONTRACTOR shall contact the CITY's Duty Supervisor at Fire Dispatch by calling (408) 277-8956 and provide a verbal status report in the evening hours, between 6:00 pm and 10:00 pm, seven (7) days a week.

2.2.8. CONTRACTOR shall discover and document any and all suspicious activities and/or characters attempting to gain unauthorized access into the

property and provide a written report to CITY's Project Manager the next morning.

2.2.9. CONTRACTOR shall prepare and submit to CITY reports on all accidents, bomb and other threats, unusual incidents and unlawful acts or crimes.

2.2.10. CONTRACTOR shall respond to emergency situations appropriately, and shall seek the assistance of law enforcement if needed.

2.2.11. CONTRACTOR shall patrol in marked vehicles and security staff shall be in uniform. CONTRACTOR must provide the vehicles.

2.3. SCOPE OF WORK - CITY HALL

The City Hall facility is surrounded by 6th Street to the east, San Fernando Street to the south and 4th Street to the west. CONTRACTOR shall coordinate contacts with CITY's Project Manager.

2.3.1. *Event Service Security*

CITY's Security Supervisor or designee may request upon short notice security guard services to be performed by CONTRACTOR in order to monitor special events.

2.3.1.1. CONTRACTOR shall be at designated facility on time and in a clean and pressed uniform with company issued photo identification.

2.3.1.2. CONTRACTOR shall not have in their possession any equipment; i.e. baton, mace, handcuffs or weapons including firearms when appearing for duty.

2.3.1.3. CONTRACTOR shall provide services including but not limited to monitoring doors and entrances to events, and checking credentials and/or badges and shall follow instructions from CITY as directed.

2.3.1.4. CONTRACTOR shall report to the on-duty CITY Event Manager upon arrival and before departure; and sign in/out on the security log.

2.3.1.5. CONTRACTOR shall enforce City Hall rules and regulations as communicated by the CITY's Event Manager.

2.3.1.6. CONTRACTOR shall immediately notify CITY's Event Manager of persons violating rules and regulations.

2.3.1.7. CONTRACTOR's staff shall conduct themselves in a professional manner at all times while working on the site by staying visible and focused on all event activity.

- 2.3.1.8.** CONTRACTOR shall refrain from making or taking personal calls, texting, emailing, browsing on the internet or socializing while working meetings or events outside of their designated breaks or lunch periods.

2.3.2. *On-call Services*

CONTRACTOR shall provide on-call services for tripped alarms. Upon notification of a tripped alarm, CONTRACTOR shall dispatch security guard to investigate the tripped alarm. CONTRACTOR response time shall be no greater than twenty (20) minutes. CONTRACTOR shall call 911 if emergency conditions are present or if there is evidence of a crime. CONTRACTOR shall notify the CITY's Project Manager if any repairs are needed to secure the facility. CONTRACTOR shall immediately notify the CITY duty supervisor of all dispatches and provide duty supervisor a detailed written report of each occurrence within forty-eight (48) hours.

2.4. SUPERVISION, MANAGEMENT CONTROLS, AND COMMUNICATION

CONTRACTOR shall be fully responsible for the direct supervision of its employees. CONTRACTOR shall also provide an overall Project Manager to manage this Agreement. CONTRACTOR's Project Manager must have the responsibility and authority to fully represent the CONTRACTOR on all matters pertaining to this Agreement. CONTRACTOR's Project Manager's responsibilities shall include, but are not limited to:

- 2.4.1.** Serve as the contact person for the CITY in the administration of this Agreement.
- 2.4.2.** Administer the CONTRACTOR's training program.
- 2.4.3.** Administer personnel duties, such as hiring, assignments, firings, schedules, timekeeping and payroll, quality standards, and employee evaluations.
- 2.4.4.** Review all guard reports, such as daily activity and incident reports.
- 2.4.5.** Review all security operations under this Agreement and make any recommendations for improvements to the CITY's Project Manager in person or in writing.

2.5. EMERGENCY AND/OR ADDITIONAL SECURITY SERVICES

- 2.5.1.** As security demands dictate, additional CONTRACTOR employees may be required by CITY on short notice and for various lengths of time. CONTRACTOR shall have available for immediate assignment to the Central Service Yard and / or City Hall supplemental personnel sufficient to cover all regularly assigned duties and other occasional services.

2.6. CONTRACTOR FURNISHED ITEMS

CONTRACTOR shall furnish the following items:

2.6.1. Guard uniforms

2.6.2. Marked patrol vehicles & fuel

2.6.3. All operational forms, reports, office supplies and other equipment required to fulfill this contract

2.6.4. Automated guard tour reporting infrastructure

EXHIBIT B
SCHEDULE OF PERFORMANCE FOR SCHEDULED SECURITY GUARD SERVICES
FOR PW FACILITIES

CONTRACTOR shall provide security guard services for PW facilities based on the schedules below:

Facility	Days/Wk	Time	Patrol Visits	Estimated Hrs/wk
Central Service Yard	Sun - Sat	5 a.m. to 5 a.m.	6 visits per 24 hr. Day (6 visits x ½ hr each x 7 days a week)	21
City Hall:				
On-call for tripped alarms	Sun - Sat	TBD		5
Unscheduled events/activities	Sun - Sat	TBD		6
Total Hours				32

EXHIBIT C COMPENSATION

1. Compensation

- 1.1. CITY shall compensate CONTRACTOR for Security Guard Services according to the following Schedule:

PWS

Description	Hourly Rate	Monthly Rate	Annual Compensation	5 Year Total Compensation
Scheduled Security Guard Patrol Services	\$26.35	\$2,397.85	\$28,774.20	\$143,871.00
On-call for tripped alarms	\$26.35	\$570.92	\$6,851.04	\$34,255.20
Unscheduled events/activities	\$29.50	\$767.00	\$9,204.00	\$46,020.00
Contingency Amount (provided for supplemental work, imposed paid days off, and potential annual adjustments)				\$49,566.80
TOTAL MAXIMUM COMPENSATION				\$273,713.00

- 1.2. In the event CITY requires supplemental services for unscheduled work, CONTRACTOR shall provide a written quote that includes all costs to complete the supplemental service requested and shall obtain approval before start of work using the Supplemental Work Order Form in Exhibit G. Upon receiving CITY's written approval to proceed with the supplemental service, CONTRACTOR shall perform the supplemental service at a time mutually agreed upon by CONTRACTOR and according to the hourly rates specified below. Payments for supplemental work shall be based on the Sections below.

Supplemental Services for Unscheduled Work	
Job Classification	Hourly Rate
Security Guard	\$21.35
Security Guard - Patrol	\$26.35

1.3. Additional Days Off Pricing

In the event CITY requires CONTRACTOR to provide additional days off to its employees, that is, in addition to days already provided by CONTRACTOR for combined days off for vacation, holiday and sick days, CITY will adjust CONTRACTOR's existing hourly pricing by the following percentage increases:

PW Financial Impact for Additional Paid Days off (Starting Hourly Rate of \$26.35):

No. of Additional Combined Days Off	Hourly % Increase	Adjusted hourly Rate (After hourly % Increase)	Adjusted Annual Compensation (After Hourly % Increase)	Financial Impact (Difference Between Annual Compensation and Adjusted Annual Compensation)
One	.28	\$26.42	\$35,724.95	\$99.75
Two	.61	\$26.51	\$35,842.51	\$217.31
Three	.89	\$26.58	\$35,942.26	\$317.06
Four	1.22	\$26.67	\$36,059.83	\$434.63
Five	1.50	\$26.75	\$36,159.58	\$534.38
Six	1.81	\$26.83	\$36,270.02	\$644.82
Seven	2.15	\$26.92	\$36,391.14	\$765.94
Eight	2.43	\$26.99	\$36,490.89	\$865.69
Nine	2.76	\$27.08	\$36,608.46	\$983.26
Ten	3.04	\$27.15	\$36,708.21	\$1,083.01
Eleven	3.29	\$27.22	\$36,797.27	\$1,172.07
Twelve	3.57	\$27.29	\$36,897.02	\$1,271.82

PW Financial Impact for Additional Paid Days off (Starting Hourly Rate of \$29.50):

No. of Additional Combined Days Off	Hourly % Increase	Adjusted hourly Rate (After hourly % Increase)	Adjusted Annual Compensation (After Hourly % Increase)	Financial Impact (Difference Between Annual Compensation and Adjusted Annual Compensation)
One	.28	\$29.58	\$9,229.77	\$25.77
Two	.61	\$29.68	\$9,260.14	\$56.14
Three	.89	\$29.76	\$9,285.92	\$81.92
Four	1.22	\$29.86	\$9,316.29	\$112.29
Five	1.50	\$29.94	\$9,342.06	\$138.06
Six	1.81	\$30.03	\$9,370.59	\$166.59
Seven	2.15	\$30.13	\$9,401.89	\$197.89
Eight	2.43	\$30.22	\$9,427.66	\$223.66
Nine	2.76	\$30.31	\$9,458.03	\$254.03
Ten	3.04	\$30.40	\$9,483.80	\$279.80
Eleven	3.29	\$30.47	\$9,506.81	\$302.81
Twelve	3.57	\$30.55	\$9,532.58	\$328.58

1.4. CONTRACTOR'S EMPLOYEES EXISTING PAID DAYS OFF:

Years of Service	No. of Vacation Days	No. of Sick Days	No. of Personal Days	No. of Holidays
After 1 year	0	0	0	0
After 5 years	0	0	0	0
After 10 years	0	0	0	0

- 1.5.** All payments are based upon CITY's acceptance of CONTRACTOR's performance of security guard services as evidenced by successful completion of the deliverables for such services. CITY shall have no obligation to pay unless CONTRACTOR has successfully completed and

CITY has approved the completed services for which payment is due.

The maximum amount of compensation to be paid to CONTRACTOR for security guard services, including payments for scheduled, supplemental services (unscheduled work), any percentage increases that CITY may impose on CONTRACTOR to provide days off and/or pay its employees for additional days off mandated by CITY'S Council, and potential annual adjustments shall not exceed Two Hundred Seventy-Three Thousand Seven Hundred Thirteen Dollars (\$273,713.00). No supplemental services shall be performed unless both parties sign a Supplemental Work Order Form outlining the services requested and the compensation agreed upon for such services. Any hours worked without proper authorization (i.e., without both parties signing a Supplemental Work Order Form) and for which payment would result in a total exceeding the maximum amount of compensation set forth in this section shall be at no cost to CITY.

2. Monthly Invoice

CONTRACTOR shall submit to CITY a monthly invoice within fifteen (15) working days of the last day of each month, in arrears, for payment for services performed pursuant to this Agreement. The monthly invoice shall include a statement of work performed during the month. CITY shall review the monthly invoice submitted by CONTRACTOR and within ten (10) working days of receipt of the invoice, CITY shall notify CONTRACTOR of any discrepancies or deficiencies in said invoice.

3. Payment to CONTRACTOR

Except as otherwise provided in this Agreement, CITY shall make monthly payments within thirty (30) calendar days of CITY's approval of CONTRACTOR's invoice. If CITY makes any payments or incurs any costs for which CITY is entitled to reimbursement from any payment otherwise due to CONTRACTOR from CITY, CITY may deduct such reimbursement from any payment otherwise due to CONTRACTOR from CITY. CITY shall submit to CONTRACTOR written documentation in support of such deduction upon CONTRACTOR's request. In the event CITY does not deduct such reimbursement from CONTRACTOR's payment but submits to CONTRACTOR an invoice for reimbursement, CONTRACTOR shall reimburse CITY within thirty (30) days of receipt of such invoice.

4. Pricing

Pricing shall be firm fixed the first year of this Agreement. During this period, CONTRACTOR's pricing may not increase.

5. Price Adjustments

In the event that CITY makes additions or deletions to the Schedule of Services, CITY and CONTRACTOR shall execute an Addendum, using Form C-1 to document the change. The monthly price shall be adjusted accordingly. In the event CITY elects to exercise its option for annual renewals, price adjustments may be considered by CITY if

CONTRACTOR can demonstrate to the satisfaction of CITY that a price increase is warranted. Increases shall not exceed three percent (3%) annually unless the CITY's living/prevaling wage increases by greater than three percent (3%).

6. LIQUIDATED DAMAGES

The parties hereto agree that it would be impractical and extremely difficult to determine the actual damage to CITY if CONTRACTOR were to terminate this Agreement prior to expiration or otherwise breach. In addition to the services provided, CITY expects to receive other benefit from CONTRACTOR's services. The parties mutually agree that liquidated damages set forth in this section are acceptable to each party and are a reasonable estimate of CITY's loss if CONTRACTOR fails to complete services in accordance with the Schedule of Performance.

TABLE 1:

LIQUIDATED DAMAGES	
Failure to visit each of the identified check-in points	CONTRACTOR will only be allowed to miss one (1) check-in per week; subsequent misses, \$10 per occurrence for each missed check-in.
Failure of a guard to be attired approved uniform	\$50 for each such occurrence and immediate removal and replacement of guard.
Failure of guards to conduct themselves in a professional and courteous and cooperative manner as determined by CITY Supervisory Staff	\$100 for each such occurrence
Number of complaints against guard exceeds three (3) in any one calendar month	\$50 for each subsequent complaint, and immediate dismissal of the guard.
Failure to follow the directions of CITY Supervisory Staff	\$100 for each such occurrence
Guard fails to check in upon coming on duty, abandons or leaves post unattended without proper notice (i.e., getting approval from CITY's Project Manager or designee)	\$150 for each such occurrence
CONTRACTOR's on duty personnel fail to provide credentials to law enforcement or representative upon request	\$100 for each such occurrence

BY PLACING THEIR INITIALS BELOW, CITY AND CONTRACTOR ACKNOWLEDGE THAT THE AMOUNTS SET FORTH BELOW HAVE BEEN AGREED UPON AS THE PARTIES' REASONABLE ESTIMATE OF CITY'S DAMAGES.

"CITY"

"CONTRACTOR"

By: _____

By: _____

FORM C-1
CONTRACT ADDENDUM for SECURITY GUARD SERVICES

☐ The following Locations/Services Levels are hereby modified:

Line	Location	Address	Sq. Ft.	Freq.	Monthly	Yearly	ADD/DELETE
				Per Wk.			

First Alarm & Security Patrol, Inc.,
a California corporation

City of San José,
a municipal corporation

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: Purchasing Officer
Date: _____

EXHIBIT D INSURANCE REQUIREMENTS

CONTRACTOR, at CONTRACTOR's sole cost and expense, shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONTRACTOR, its agents, representatives, employees or subCONTRACTORS.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by CITY'S Risk Manager.

B. Minimum Limits of Insurance

CONTRACTOR shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and

4. Professional Liability Errors & Omissions: \$1,000,000 per occurrence/aggregate limit.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, employees, agents and CONTRACTORS; or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. The City of San José, its officers, employees, agents and CONTRACTORS are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, CONTRACTOR; products and completed operations of CONTRACTOR; premises owned, leased or used by CONTRACTOR; and automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and CONTRACTORS.
 - b. CONTRACTOR 's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and CONTRACTORS. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or CONTRACTORS shall be excess of CONTRACTOR 's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by CONTRACTOR shall not affect coverage provided CITY, its officers, employees, agents, or CONTRACTORS.
 - d. Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Coverage shall contain a waiver of subrogation in favor of the CITY, its officers, employees, agents and CONTRACTORS.

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of San José, its officers, employees, agents and CONTRACTORS.

3. All Coverages

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to CITY'S Risk Manager.

F. **Verification of Coverage**

CONTRACTOR shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to Riskmgmt@sanjoseca.gov or mailed to the following postal address or any subsequent address as may be directed in writing by the Risk Manager:

City of San José – Finance
Risk Management
200 East Santa Clara Street, 13th Floor Tower
San José, CA 95113-1905

G. **Subcontractors**

CONTRACTOR shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.



EXHIBIT E
LABOR COMPLIANCE ADDENDUM
SAN JOSÉ LIVING WAGE AND PREVAILING WAGE POLICIES

AGREEMENT TITLE:	AGREEMENT FOR SECURITY GUARD SERVICES AT DEPARTMENT OF PUBLIC WORKS FACILITIES BETWEEN THE CITY OF SAN JOSE AND FIRST ALARM SECURITY & PATROL, INC.
CONTRACTOR Name and Address:	First Alarm Security & Patrol, Inc. 1731 Technology Drive #800 San José, CA 95110

By executing this Addendum, CONTRACTOR acknowledges and agrees that the work performed pursuant to the above referenced Agreement or Service Order is subject to all applicable provisions.

Payment of Minimum Compensation to Employees. CONTRACTOR shall be obligated to pay not less than the General Prevailing Wage Rate and/or Living Wage Rate as indicated in the attached Exhibit(s) titled **Work Classification and/or Living Wage Determination**.

A. Prevailing Wage Requirements. California Labor Code and/ or Resolutions of the San Jose City Council require the payment of not less than the general prevailing rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement. Notwithstanding any other provision of this Agreement, CONTRACTOR shall not be entitled to any adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.

Living Wage Requirements. Any person employed by CONTRACTOR or subCONTRACTOR or City financial recipient or any sub recipient whose compensation is attributable to the City's financial assistance, who meets the following requirements is considered a covered employee. The employee: 1) is not a person who provides volunteer services, that are uncompensated except for reimbursement of expenses such as meals, parking or transportation; 2) spends at least half of his or her time on work for the City [4 hours a day or 20 hours a week]; 3) is at least eighteen (18) years of age; and 4) is not in training for the period of training specified under training standards approved by the City.

B. Reports. CONTRACTOR shall file a completed and executed copy of this Addendum with the Department of Finance/Purchasing Division. Upon award the Department of Finance/Purchasing Division shall provide the CONTRACTOR with compliance documents to be completed and returned (with supporting

documentation) to the Office of Equality Assurance. **These documents must be returned within 10 days of receipt.** CONTRACTOR shall not perform on site work on this contract until labor compliance documents are filed. CONTRACTOR shall also report additional information, including certified payrolls, as requested by Director of Equality Assurance to assure adherence to the Policy.

C. Coexistence with Any Other Employee Rights. These provisions shall not be construed to limit an employee's ability to bring any legal action for violation of any rights of the employee.

D. Audit Rights. All records or documents required to be kept pursuant to this Agreement to verify compliance with the Wage Requirement shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at CONTRACTOR's address indicated for receipt of notices in this Contract.

E. Enforcement.

1. **General.** CONTRACTOR acknowledges it has read and understands that, pursuant to the terms and conditions of this Agreement, it is required to comply with the Wage Requirement and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") CONTRACTOR further acknowledges the City has determined that the Wage Requirement promotes each of the following (collectively "Goals"):
 - a. It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
 - b. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
 - c. Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.
 - d. It increases competition by promoting a more level playing field among CONTRACTORs with regard to the wages paid to workers.

2. Remedies for CONTRACTOR's Breach of Prevailing Wage/Living Wage Provisions.

- a. **WITHHOLDING OF PAYMENT:** CONTRACTOR agrees that the Documentation Provision is critical to the City's ability to monitor CONTRACTOR's compliance with the Wage Requirement and to ultimately achieve the Goals. CONTRACTOR further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and CONTRACTOR agree that CONTRACTOR's compliance with this Provision, as well as the Wage Requirement, is an express condition of City's obligation to make each payment due to the CONTRACTOR pursuant to this Agreement. **THE CITY IS NOT OBLIGATED TO MAKE ANY PAYMENT DUE THE CONTRACTOR UNTIL CONTRACTOR HAS PERFORMED ALL OF ITS OBLIGATIONS UNDER THESE PROVISIONS. THIS PROVISION MEANS THAT CITY CAN WITHHOLD ALL OR PART OF A PAYMENT TO CONTRACTOR UNTIL ALL REQUIRED DOCUMENTATION IS SUBMITTED.** Any payment by the City despite CONTRACTOR's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Requirement or the Documentation Provision.
- b. **RESTITUTION:** Require the employer to pay any amounts underpaid in violation of the required payments and City's administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.
- c. **SUSPENSION OR TERMINATION:** Suspend and/or terminate Agreement for cause;
- d. **DEBARMENT:** Debar CONTRACTOR or subCONTRACTOR from future City contracts and/or deem the recipient ineligible for future financial assistance.
- e. **LIQUIDATED DAMAGES FOR BREACH OF WAGE PROVISION:** CONTRACTOR agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City's damage would not be remedied by CONTRACTOR's payment of restitution to the workers who were paid a substandard wage. CONTRACTOR further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid. The City and CONTRACTOR mutually agree that making a precise determination of the amount of City's damages as a result of CONTRACTOR's breach of the Wage Requirement would be impracticable and/or extremely difficult. **THEREFORE, THE PARTIES AGREE THAT, IN THE EVENT OF SUCH A BREACH, CONTRACTOR**

SHALL PAY TO THE CITY AS LIQUIDATED DAMAGES THE SUM OF THREE (3) TIMES THE DIFFERENCE BETWEEN THE ACTUAL AMOUNT OF WAGES PAID AND THE AMOUNT OF WAGES THAT SHOULD HAVE BEEN PAID.

City

CONTRACTOR

By _____
Name: Mark Giovannetti
Title: Chief Purchasing Officer
Date: _____

By _____
Name: _____
Title: _____
Date: _____



CITY LIVING WAGE DETERMINATION

SCOPE: Security Guard Services for City Departments/Locations: Public Works; Department of Transportation; Parks, Recreation and Neighborhood Services; Water Pollution Control Plant/Municipal Water; and Work2Future; Norman Y. Mineta San Jose International Airport

ISSUANCE

DATE: February 13, 2013

Living Wage Rate With Health Benefits	Living Wage Rate Without Health Benefits
\$14.73	\$15.98

Hours and Days of Work

(Industrial Welfare Commission Order No. 4-2001)

Employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh (7th) consecutive day of work in a workweek.

RATES WILL BE SUBJECT TO ADJUSTMENT ON THE ANNIVERSARY DATE OF THE AGREEMENT

ATTACHMENT E-1 WAGE REQUIREMENTS AND INFORMATION

Pursuant to City of San Jose Living Wage Policy, CONTRACTOR and any Subcontractor shall be obligated to pay not less than the living wage in accordance with the requirements of this Policy document, and the Wage Determination as indicated in **Exhibit 1** to this attachment.

I. CITY COUNCIL WAGE POLICY

A. Living Wage Policy

Under City Council Resolution No. 68900, CONTRACTORS awarded certain City service and labor contracts are required to pay a minimum level of compensation to covered employees who work on these projects.

Living wages shall mean the wages paid under a collective bargaining agreement between the CONTRACTOR and a recognized union representing employees who will perform services pursuant to the Agreement.

If the wage rates set forth in the collective bargaining agreement fall below the then current Living Wage Rate set by the City of San Jose, the required rate of pay shall be the City's Living Wage Rate unless the collective bargaining agreement expressly provides that the agreement shall supersede the requirements of the Living Wage Policy.

If there is no collective bargaining agreement as described above, not less than the following Living Wage Rate must be paid to covered employees performing work identified in the applicable wage determination issued by the City of San Jose's Office of Equality Assurance.

1. If health insurance benefits are provided, a wage of not less than **Fourteen Dollars and Seventy-Three Cents (\$14.73)** per hour.
2. If health insurance benefits are not provided, a wage of not less than **Fifteen Dollars and Ninety-Eight Cents (\$15.98)** per hour.

B. Reports

The Office of Equality Assurance will monitor the payment of living wages by requiring CONTRACTOR and all subcontractors to file a LABOR COMPLIANCE WORKFORCE STATEMENT (**Exhibit 2**) and LABOR COMPLIANCE FRINGE BENEFIT STATEMENT (**Exhibit 3**) with supporting documentation. CONTRACTOR and subcontractors shall also report such

other additional information, including certified payrolls, as requested by the Director of Equality Assurance to ensure adherence to the Policies. The above referenced documents shall be submitted within 10 days of execution of this Agreement to the address below.

City of San José
Office of Equality Assurance
200 East Santa Clara Street
Fifth Floor
San José, CA 95113
Phone: 408-535-8430

II. LIVING WAGE POLICY PROVISIONS

On November 17, 1989, by Resolution No. 68554 and amended on June 8, 1999 by Resolution No. 68900, the San José City Council adopted its Living Wage Policy to meet the employment and economic development needs of low wage workers by mandating:

1. A minimum level of compensation for workers employed by CONTRACTORS and subcontractors who are awarded certain City of San Jose service and labor contracts with an expenditure in excess of \$20,000 and recipients who receive direct monetary financial assistance from the City in the amount of \$100,000 or more in any twelve month period, excluding non-profit corporations;
2. The provision of health insurance benefits or the ability to afford health insurance;
3. Retention of employees when certain new CONTRACTORS take over a continuing City service;
4. An environment of labor peace; and
5. Employee Work Environment Evaluation (Third Tier Review)

A. WAGE REQUIREMENTS

1. Covered Employees Defined:

For the purpose of this provision, Covered Employees means any person employed by CONTRACTOR or subcontractors who meets the following conditions:

- a) The person does not provide volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation;
- b) The person expends at least half of his/her time on work for the City;
- c) The person is at least eighteen (18) years of age; and
- d) The person is not in training for the period of training specified under training standards approved by the City of San Jose.

B. EMPLOYEE RETENTION REQUIREMENTS

One of the provisions of the Living Wage Policy is a requirement that on certain agreements over \$50,000, CONTRACTOR must retain the workers who have been performing the services under the previous CONTRACTOR. Employee retention is applicable to CONTRACTOR and all subCONTRACTORS under the Agreement in two respects: (1) CONTRACTOR will be obligated to adhere to these requirements in hiring; and (2) CONTRACTOR will also be obligated to cooperate with the City in transitioning to a new CONTRACTOR at the end of the term of the Agreement.

The following provisions are applicable to this RFP and will become a part of the Agreement:

1. Qualified Retention Employee Defined

Qualified Retention Employee means any person employed by predecessor CONTRACTOR or any subcontractors to the predecessor CONTRACTOR who meets the following requirements:

- a) The person provides direct labor or service on the Agreement;
- b) The person is not an “exempt” employee under the Fair Labor Standards Act (FSLA); and
- c) The person has been employed on the City contract by the predecessor service CONTRACTOR or subcontractors for at least six months prior to the date of the new Agreement.

2. Current Eligible Retention Employee Defined

Current Eligible Retention Employee means a current employee of new CONTRACTOR who meets the following requirements:

- a) The person has been employed by CONTRACTOR for at least six months prior to the date of the new service or labor agreement;
- b) The person would otherwise need to be terminated as a result of the implementation of the City of San Jose Living Wage Policy; and
- c) CONTRACTOR chooses to designate the person as a Current Eligible Retention Employee.

CONTRACTOR must establish requirements i. and ii. above by submitting payroll records or other reliable evidence satisfactory to the Director of Equality Assurance. If CONTRACTOR cannot submit such evidence, the employee cannot be designated a Current Eligible Retention Employee.

C. EMPLOYMENT OF QUALIFIED RETENTION EMPLOYEES

CONTRACTOR shall offer continued employment to all Qualified Retention Employees who are interested in such continued employment.

The City's Office of Equality Assurance will provide CONTRACTOR with information regarding which employees of the predecessor CONTRACTOR are Qualified Retention Employees to the extent such information is available to the City of San Jose.

Notwithstanding anything to the contrary in this provision, CONTRACTOR may deem an employee not to be a Qualified Retention Employee if, and only if:

- 1. The employee has been convicted of a crime that is related to the job or to his/her job performance; or
- 2. CONTRACTOR can demonstrate to the City that the employee presents a significant danger to customers, co-workers or City staff.

In the event that CONTRACTOR does not have enough positions available to hire all Qualified Retention Employees desiring continued employment and to retain its Current Eligible Retention Employees, CONTRACTOR shall hire Qualified Retention Employees and retain Current Eligible Retention Employees by seniority within each employment classification. For any positions that become available during the initial ninety (90) day period of the contract, CONTRACTOR shall hire Qualified Retention Employees and rehire

its Current Eligible Retention Employees by seniority within each employment classification.

1. Retention Requirements

- a) Qualified Retention Employees hired by CONTRACTOR may not be discharged without cause during the initial ninety (90) day period of their employment.
- b) CONTRACTOR shall offer continued employment to each Qualified Retention Employee who received a satisfactory performance evaluation at the end of the initial ninety (90) day period of employment. Such employment shall be offered under the same terms and conditions established by CONTRACTOR for all of its employees.

2. Third Part Beneficiary

Qualified Retention Employees are third party beneficiaries of this Agreement which means that the employee has the right to enforce the provisions of the Agreement independent of the City's right to enforce the provisions of the Agreement. The third party rights will become effective only when the Agreement becomes effective. No third party rights are intended to apply to any employee.

3. Obligations Upon Termination

Upon termination of this Agreement, CONTRACTOR shall fully cooperate with all City requests regarding contacts with CONTRACTOR's employees to enable a transition in the workforce to a new CONTRACTOR.

D. EMPLOYEE WORK ENVIRONMENT AND LABOR PEACE ASSURANCE

CONTRACTOR has provided a work environment and labor peace assurance and is attached. CONTRACTOR warrants and represents the above listed benefits and complaint procedure will be maintained for the term of the agreement, and CONTRACTOR declares that, to the best of its ability, it intends to ensure that essential services and labor for which it has been contracted will be provided efficiently and without interruption.

E. ENFORCEMENT

1. General

CONTRACTOR acknowledges it has read and understands that, pursuant to the terms and conditions of this Contract, it is required to pay workers either a prevailing or living wage ("Wage Provision") and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision") CONTRACTOR further acknowledges the City has determined that the Wage Provision promotes each of the following (collectively "Goals"):

- a) It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
- b) It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
- c) Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.
- d) It increases competition by promoting a more level playing field among CONTRACTORS with regard to the wages paid to workers.

2. Remedies for CONTRACTOR's Breach of Prevailing Wage/Living Wage Provisions

- a) **Withholding Of Payment:** CONTRACTOR agrees that the Documentation Provision is critical to the City's ability to monitor CONTRACTOR's compliance with the Wage Requirement and to ultimately achieve the Goals. CONTRACTOR further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and CONTRACTOR agree that CONTRACTOR's compliance with this Provision, as well as the Wage Requirement, is an express condition of City's obligation to make each payment due to the CONTRACTOR pursuant to this Agreement. The City is not obligated to make any payment due the CONTRACTOR until CONTRACTOR has performed all of its obligations under these Provisions. This Provision means that City can withhold all or part of a payment to CONTRACTOR until all required documentation is submitted. Any payment by the City despite CONTRACTOR's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any

other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Provision or the Documentation Provision.

- b) **Restitution:** CONTRACTOR agrees that in the event of a breach of its obligations it will pay any amounts underpaid in violation of the required payments and City's administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.
- c) **Liquidated Damages For Breach Of Wage Provision:** CONTRACTOR agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City's damage would not be remedied by CONTRACTOR's payment of restitution to the workers who were paid a substandard wage. CONTRACTOR further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing/living wage and the longer the amount of time over which such wages were not paid. The City and CONTRACTOR mutually agree that making a precise determination of the amount of City's damages as a result of CONTRACTOR's breach of the Wage Requirement would be impractical and/or extremely difficult. Therefore, the parties agree that, in the event of such a breach, CONTRACTOR shall pay to the City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should have been paid.
- d) **Additional Remedies:** CONTRACTOR agrees that in addition to the remedies set forth above City retains the right to suspend or terminate the Agreement for cause and to debar CONTRACTOR or subCONTRACTORS from future City contracts and/or deem the recipient ineligible for future financial assistance.

F. AUDIT RIGHTS

All records or documents required to be kept pursuant to this Contract to verify compliance with the Wage Provision shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at CONTRACTOR's address indicated for receipt of notices in this Contract.

G. COEXISTENCE WITH ANY OTHER EMPLOYEE RIGHTS

These provisions shall not be construed to limit an employee's ability to bring any legal action for violation of any rights of the employee.

**Exhibit E-2
Labor Peace**

Place holder for Employee Work Environment and Labor Peace Questionnaire.

EXHIBIT F
NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE:	
CONTRACTOR Name and Address:	
DATE:	

Pursuant to Section ____ of the Agreement referenced above, the City of San José ("City") hereby exercises its option to extend the term under the following provisions:

OPTION NO.	
-------------------	--

NEW OPTION TERM

Begin date:	
End date:	

MAXIMUM COMPENSATION for New Option Term:	
--	--

For the option term exercised by this Notice, City shall pay CONTRACTOR an amount not to exceed the amount set forth above for CONTRACTOR's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of San José hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

CITY OF SAN JOSE, a municipal corporation By _____ Name: Title: Date: _____
--

